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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,865	12/21/2001	Gerald Delgorgue	P21708	5631

7055 7590 06/20/2003

GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER
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STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/20/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/023,865

Applicant(s)

DELGORGUE ET AL. 

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed March 21, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language (there is no English language translation and the reference to the specification by the applicant is a reference to a specification that is not in English). It has been placed in the application file, but the information referred to therein, with respect to the foreign references, has not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference number 5 in Figure 2. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kogert et al. 3,570,149. Kogert et al. '149 discloses all the limitations of the claims including the following:

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assembling an upper to a sole (see col. 1, lines 54-60); applying at least one layer of flexible or semi-rigid polymer in a liquid state in predetermined areas of the upper (col. 1, lines 54-60, col. 2, lines 7-11); drying (col. 2, lines 7-11, multiple layers can only be applied if the preceding layer has dried, otherwise would not be separate layers); applying the polymer with a brush (see painting in col. 2, lines 12-13 and 22-24); applying the polymer by spraying (col. 2, lines 12-13 and 20-24); applying the polymer so as to straddle the upper and the sole (col. 1, lines 54-65); liquefying the polymer by heating (col. 2, line 41); the polymer is made of polyurethane (col. 2, line 41).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kogert et al. 3,570,149 as applied to claim 1 above in view of Donzis 5,232,715. Kogert et al. '149 as applied to claim 1 above discloses all the limitations of the claim except for diluting the polymer in a solvent. Donzis '715 teaches that when a liquid is used to apply the outer wall, it is typically a solution of a prepolymer (see col. 5, lines 34-59). Therefore, the applying of a polymer to the upper of Kogert et al. '149 can include combining the polymer with a solvent, as taught by Donzis '715, to apply the outer layer as a liquid and allowing it to dry and cure or harden while removing the solvent and thereby allowing for the layer to be better spread over the upper and sole.

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7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogert et al. 3,570,149 as applied to claim 10 above in view of Norton et al. 6,558,784. Kogert et al. '149 discloses all the limitations of the claims except for the upper comprising a mesh material and the mesh material being three-dimensional. Norton et al. '784 teaches that a coated upper can have a mesh material as one of the layers of the upper and then the upper can be formed into a three-dimensional geometry (see Abstract). This allows for the upper to be light in weight, reinforced and formed into any desired shape. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the upper of Kogert et al. '149 as applied to claim 10 above, out of the multilayered material including a mesh, as taught by Norton et al. '784, to allow for the upper to be light in weight, reinforced and easy to shape into the desired shape for an shoe.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 872-9301, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday from 6:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>



Anthony D Stashick  
Primary Examiner  
Art Unit 3728

ADS  
June 14, 2003